



COVID-19 Outbreak Government Activity

Below is a summary of activities undertaken or announced by the federal government that may be of special interest to Medical Professional Liability (MPL) Association members and their insureds:

Liability

Congress passed the [Families First Coronavirus Response Act](#) (H.R. 6201) that provides immunity from liability lawsuits to a manufacturer or user of a personal respiratory protective device during the course of the national emergency related to the COVID-19 outbreak.

Secretary Azar of the U.S. Department of Health and Human Services (HHS) issued a [letter](#) and [guidance](#) to Governors requesting that they take actions to “extend the capacity of the health care workforce.” Among the actions recommended were to waive in-state licensure requirements, relax scope of practice requirements, develop a list of liability protections for in-state and out-of-state health professionals, temporarily modify or rescind MPL insurance policy provisions that may deny coverage to those who travel out-of-state to provide COVID-19 coverage, and ask insurers to waive MPL insurance policy provisions that limit such practices.

HHS issued a [declaration](#) stating that immunity from liability was granted for the manufacture, distribution, or administration of any “antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID–19, or the transmission of SARS-CoV–2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.”

Telemedicine

The Office for Civil Rights at HHS [announced](#) it will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Privacy Rule against covered healthcare providers in connection with the good-faith provision of telehealth during the COVID-19 nationwide public health emergency. This allows health professional to utilize a large variety of non-public facing telecommunications tools to treat patients remotely even if such tools are not fully HIPAA compliant.

The Centers for Medicare and Medicaid Services (CMS) [announced](#) it will temporarily pay clinicians to provide telehealth services for beneficiaries residing across the entire country. This decision waives many limitations on the type of health professionals who may provide telehealth services and the locations in which the care may be provided or received.

The HHS Office of Inspector General issued a [policy statement](#) that healthcare providers will not be subject to administrative sanctions for reducing or waiving any cost-sharing obligations beneficiaries of federal healthcare programs may owe for telehealth services.

Congress passed the [Coronavirus Preparedness and Response Supplemental Appropriations Act](#) (H.R. 6074) that provides the Secretary of HHS the ability to waive Medicare requirements in order to allow for increased use of telemedicine services during an emergency.

Licensure

HHS announced it will promulgate a regulation to allow all physicians to work across state lines to provide surge capacity in the most heavily affected states.

Other

CMS expanded blanket [waivers](#) to allow physicians to practice at the “top of their license” (i.e. minimizing time spent supervising certain care providers) and to allow for the practice of medicine across state lines without needing to be licensed in the new state (applies only to Medicare enrolled physicians and does not supersede any state laws to the contrary).

CMS issued additional [waivers](#) to current regulations to expand hospital capacity. These waivers will allow hospitals to use temporary sites for providing care, increase access to telemedicine for Medicare beneficiaries, and allow for home- or community-based testing.

CMS released [guidance](#) to limit non-essential adult elective surgery and medical and surgical procedures, including all dental procedures, so that resources may be targeted to reducing the spread of COVID-19.

The Office of Civil Rights within the HHS issued [guidance](#) regarding how protected health information may be shared under HIPAA during an outbreak of infectious disease without violating the Rule.

MPL Association Actions

The MPL Association is undertaking a number of activities to address the needs and concerns of the MPL community, including:

- Initiated a [letter](#) from the Health Coalition on Liability and Access to Congressional leaders requesting that full immunity for health professionals and facilities for the duration of the national public health emergency regarding COVID-19 be included in the fourth stimulus package.
- Achieved enactment of [liability protections](#) for volunteer healthcare providers who treat patients with or suspected of having the COVID-19 illness as part of the coronavirus stimulus package #3.
- Provided [recommendations](#) to the White House on actions that should be taken to protect the interests of the medical/hospital community and MPL insurers during the COVID-19 outbreak.
- Engaging state officials on steps which may be taken to protect healthcare professionals from liability claims.
- Working with state-level stakeholders to coordinate health professional liability protection efforts.
- Leading, coordinating and organizing activities of the Health Coalition on Liability and Access to unite MPL stakeholders in advocacy efforts to provide additional liability protections.
- Coordinating with a wide variety of other medical organizations to develop joint efforts and advocacy strategies for protecting the interests of the MPL community.